

REVISED  
BCP APPLICATION  
6.02.04

June 1, 2004

**BY FEDERAL EXPRESS**

Robert Marino  
Chief, Site Control Section  
New York State Department of  
Environmental Conservation  
625 Broadway  
Albany, New York 12233-7010

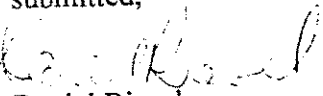
Re: Greater Waterside Site (the "Site")  
Portion of 685 First Avenue ("Parking Lot"), Site No. V-00429-2  
700 First Avenue ("Waterside Generating Station"), Site No.  
V-00432-2  
708 First Avenue ("Office Building"), Site No. V-00431-2  
New York, New York  
VCO Number D2-0001-01-03

Dear Mr. Marino:


We have enclosed originals and two copies of the revised Brownfield Cleanup Program ("BCP") applications for the above-referenced Greater Waterside Site of Volunteer TRC Companies, Inc., the Remediation Contractor and respondent under Voluntary Cleanup Order Index Number D2-0001-01-03, East River Realty Company, LLC, corporate successor to FSM East River Associates LLC, a respondent under the above-referenced Voluntary Cleanup Order, and the Consolidated Edison Company of New York, Inc., the owner of the Site which is the subject of Voluntary Cleanup Order D2-0001-01-03. This application, together with the one for the Kips Bay Fuel Terminal Site being submitted under letter of the same date, supersedes our application submitted with our letter dated March 29, 2004.

Applicants respectfully request that the Greater Waterside Site, currently in the Voluntary Cleanup Program, be accepted into the Brownfield Cleanup Program.

Respectfully submitted,  
submitted,

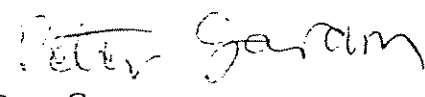
  
Daniel Riesel  
Sive, Paget & Riesel, P.C.  
1815-S  
460 Park Avenue  
New York, NY 10022  
(212) 421-2150  
[driesel@sprlaw.com](mailto:driesel@sprlaw.com)

Respectfully submitted,

  
Gail S. Port  
Proskauer Rose LLP

1585 Broadway  
New York, NY 10036  
(212) 969-3243  
[gport@proskauer.com](mailto:gport@proskauer.com)

Respectfully

  
Peter Garam  
4 Irving Place, Room  
New York, NY 10003  
(212) 460-2985  
[garamp@coned.com](mailto:garamp@coned.com)

Attorney for East River  
Realty Company, LLC

Attorney for TRC  
Companies, Inc.

Attorney for  
Consolidated  
Edison Company of  
New York, Inc.

Enclosures

cc: Denise J. D'Ambrosio, Assistant Counsel  
New York State Department of Environmental Conservation  
Eastern Field Unit  
200 White Plains Road, 5<sup>th</sup> Floor  
Tarrytown, NY 10591-5805

Anthony Quartararo, Assistant Counsel (w/o encls.)  
Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-5500

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION

ECL ARTICLE 27 / TITLE 14

10/9/03

**Applicant Information**

NAME East River Realty Company, LLC

ADDRESS 9 West 57<sup>th</sup> Street, Suite 1610

CITY/TOWN New York, New York

ZIP CODE 10019

PHONE (212) 308-3800

FAX (212) 308-3877

E-MAIL

NAME OF APPLICANT'S REPRESENTATIVE Daniel Riesel, Esq.

ADDRESS 460 Park Avenue, 10<sup>th</sup> Floor

CITY/TOWN New York, New York

ZIP CODE 10022

PHONE (212) 421-2150

FAX (212) 906-9032

E-MAIL driesel@sprlaw.com

THE APPLICANT MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐ PARTICIPANT

An applicant who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

☒ VOLUNTEER

An applicant other than a participant, including an applicant whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, the applicant certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

Applicant Relationship to Property (check one):

☐ Previous Owner ☐ Current Owner ☒ Potential /Future Purchaser ☐ Other \_\_\_\_\_**Current Owner/Operator Information**

OWNER'S NAME (if different from applicant) Consolidated Edison Company of New York, Inc.

ADDRESS 4 Irving Place

CITY/TOWN New York, New York

ZIP CODE 10003

PHONE (212) 460-4600

FAX (212) 260-5713

E-MAIL stelbenr@coned.com

OPERATOR'S NAME (if different from applicant) Remediation Contractor under the VCO: TRC Companies, Inc.

ADDRESS 1200 Wall Street West, 2<sup>nd</sup> Floor

CITY/TOWN Lyndhurst, New Jersey

ZIP CODE 07071

PHONE (201) 933-5541

FAX (201) 933-5601

E-MAIL emailley@trcsolutions.com

Site Information		
SITE NAME The Greater Waterside Site (the "Site")		
SITE ADDRESS (SEE ATTACHMENT A)	CITY/TOWN (SEE ATTACHMENT A)	ZIP CODE (SEE ATTACHMENT A)
COUNTY (SEE ATTACHMENT A)	SITE SIZE (ACRES) (SEE ATTACHMENT D)	
LATITUDE (SEE ATTACHMENT A)	LONGITUDE (SEE ATTACHMENT A)	
PLEASE ATTACH A COUNTY TAX MAP WITH IDENTIFIER NUMBERS, ALONG WITH ANY FIGURES NEEDED TO SHOW THE LOCATION AND BOUNDARIES OF THE SITE. ALSO INCLUDE A USGS 7.5 MINUTE QUAD MAP IN WHICH THE SITE IS LOCATED.		
1. DO THE SITE BOUNDARIES CORRESPOND TO TAX MAP METES AND BOUNDS? (SEE ATTACHMENTS C-F) IF NO, PLEASE ATTACH A METES AND BOUNDS DESCRIPTION OF THE SITE.		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
2. IS THE SITE PART OF A DESIGNATED BROWNFIELD OPPORTUNITY AREA PURSUANT TO GML970-R? IF YES, IDENTIFY AREA (NAME) _____		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
3. IS THE SITE PART OF A DESIGNATED EN-Zone PURSUANT TO TL § 21(b)(6). IF YES, IDENTIFY AREA (NAME) _____		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Applicant Eligibility Information (Please refer to ECL § 27-1407)		
1. ARE ANY ENFORCEMENT ACTIONS PENDING AGAINST THE APPLICANT REGARDING THIS SITE?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
2. IS THE APPLICANT SUBJECT TO AN OUTSTANDING CLAIM BY THE SPILL FUND FOR THIS SITE?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
3. HAS THE APPLICANT VIOLATED ANY PROVISION OF ECL ARTICLE 27?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
4. HAS THE APPLICANT BEEN PREVIOUSLY DENIED ENTRY TO THE BCP?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
5. HAS THE APPLICANT COMMITTED A NEGLIGENT OR INTENTIONALLY TORTIOUS ACT REGARDING HAZARDOUS WASTE OR PETROLEUM?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
6. HAS THE APPLICANT BEEN CONVICTED OF A CRIMINAL OFFENSE THAT INVOLVES A VIOLENT FELONY, FRAUD, BRIBERY, PERJURY, THEFT, OR OFFENSE AGAINST PUBLIC ADMINISTRATION?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
7. HAS THE APPLICANT KNOWINGLY FALSIFIED STATEMENTS OR CONCEALED MATERIAL FACTS IN A MATTER RELATED TO THE DEPARTMENT?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
8. HAS THE APPLICANT, BASED ON THE PROVISIONS OF ECL ARTICLE 27-1407 (OR A SIMILAR PROVISION OF FEDERAL OR STATE LAW), COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR DENIAL OF A BCP APPLICATION?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Site Eligibility Information (Please refer to ECL § 27-1405)		
1. DOES THE SITE MEET THE DEFINITION OF A BROWNFIELD SITE (REAL PROPERTY, THE REDEVELOPMENT OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OR POTENTIAL PRESENCE OF A HAZARDOUS WASTE, PETROLEUM, POLLUTANT, OR CONTAMINANT)?		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
2. IS THE SITE LISTED ON THE NATIONAL PRIORITIES LIST?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
3. IS THE SITE LISTED ON THE NYS REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES? IF YES, PLEASE PROVIDE: SITE # _____ CLASS # _____		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
4. IS THE SITE SUBJECT TO A PERMIT UNDER ECL ARTICLE 27, TITLE 9, OTHER THAN AN INTERIM STATUS FACILITY?		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
5. IS THE SITE SUBJECT TO A CLEANUP ORDER UNDER NAVIGATION LAW ARTICLE 12 OR ECL ARTICLE 17 TITLE 10? (SEE NOTE 1)		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
6. IS THE SITE SUBJECT TO A STATE OR FEDERAL ENFORCEMENT ACTION RELATED TO HAZARDOUS WASTE OR PETROLEUM? (SEE NOTE 1)		<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Project Description		
PLEASE ATTACH A DESCRIPTION OF THE PROJECT WHICH INCLUDES THE FOLLOWING COMPONENTS: (SEE ATTACHMENT B)		
<ul style="list-style-type: none"><li>PURPOSE AND SCOPE OF THE PROJECT</li><li>ESTIMATED PROJECT SCHEDULE</li></ul>		

**Site's Environmental History**

TO THE EXTENT THAT EXISTING INFORMATION/STUDIES/REPORTS ARE AVAILABLE TO THE APPLICANT, PLEASE ATTACH THE FOLLOWING:

**1. ENVIRONMENTAL DATA (SEE ATTACHMENTS G AND H)**

A PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT PREPARED IN ACCORDANCE WITH ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), AND ALL ENVIRONMENTAL REPORTS RELATED TO CONTAMINANTS ON OR EMANATING FROM THE SITE.  
IF A FINAL INVESTIGATION REPORT IS INCLUDED, INDICATE WHETHER IT MEETS THE REQUIREMENTS OF ECL ARTICLE 27-1415(2):

☒ YES ☐ NO

**2. OWNERS (SEE ATTACHMENT H)**

A LIST OF PREVIOUS OWNERS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER LISTED. IF NO RELATIONSHIP, PUT "NONE").

**3. OPERATORS (SEE ATTACHMENT H)**

A LIST OF PREVIOUS OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBER (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OPERATOR LISTED. IF NO RELATIONSHIP, PUT "NONE").

**Contact List Information (SEE ATTACHMENT I)**

PLEASE ATTACH, AT A MINIMUM, THE NAMES AND ADDRESSES OF THE FOLLOWING:

1. THE CHIEF EXECUTIVE OFFICER AND ZONING BOARD CHAIRPERSON OF EACH COUNTY, CITY, TOWN AND VILLAGE IN WHICH THE SITE IS LOCATED.
2. RESIDENTS, OWNERS, AND OCCUPANTS OF THE SITE AND PROPERTIES ADJACENT TO THE SITE.
3. LOCAL NEWS MEDIA FROM WHICH THE COMMUNITY TYPICALLY OBTAINS INFORMATION.
4. THE PUBLIC WATER SUPPLIER WHICH SERVICES THE AREA IN WHICH THE SITE IS LOCATED.
5. ANY PERSON WHO HAS REQUESTED TO BE PLACED ON THE SITE CONTACT LIST.
6. THE ADMINISTRATOR OF ANY SCHOOL OR DAY CARE FACILITY LOCATED ON OR NEAR THE SITE.
7. THE LOCATION OF A DOCUMENT REPOSITORY FOR THE PROJECT (E.G., LOCAL LIBRARY)

**Contaminant Information (SEE ATTACHMENT J)**

INDICATE KNOWN OR SUSPECTED CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN OR SUSPECTED TO HAVE BEEN AFFECTED:

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum					
Chlorinated Solvents					
Other VOCs					
SVOCs					
Metals					
Pesticides					
PCBs					
Other*					

\*Please describe: \_\_\_\_\_

**Land Use Factors (Please refer to ECL § 27-1415(3))**

Current Use: ☐ Residential ☐ Commercial ☒ Industrial ☐ Other \_\_\_\_\_

Future Use: ☒ Residential ☒ Commercial ☐ Industrial ☐ Other \_\_\_\_\_

Please check the appropriate boxes and provide an explanation as an attachment if appropriate.

	Yes	No	Unknown
1. Do current historical and/or recent development patterns support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the proposed use consistent with applicable zoning laws/maps? (See Note 2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



	Yes	No	Unknown
3. Is the proposed use consistent with applicable brownfield opportunity area designations? (See GML 970-r)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, other adopted land use plans?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)). (See Note 3)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Are there any federal or State land use designations relating to this site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Do the population growth patterns and projections support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the site accessible to existing infrastructure?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species proximate to the site? (See Note 4)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are there floodplains proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Are there any institutional controls currently applicable to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas. (SEE ATTACHMENT K)			
14. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas. (SEE ATTACHMENT L)			
15. Describe on attachment the geography and geology of the site. (SEE ATTACHMENT M)			
(Note: the 16th criteria relates to comments from the public, which would not be received at the time of application)			

### Statement of Certification

(By applicant who is an individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

(By an applicant other than an individual) (SEE ATTACHED STATEMENT OF CERTIFICATION)

I certify that I am \_\_\_\_\_ (title) of \_\_\_\_\_ (entity); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

### SUBMITTAL INFORMATION:

Four (4) complete copies, one with original signatures, are required.

- Three (3) of the copies, one with original signatures, must be sent to:

Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

- One (1) copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our website for the address of our regional offices: <http://www.dec.state.ny.us/website/der/index.html>

FOR DEPARTMENT USE ONLY

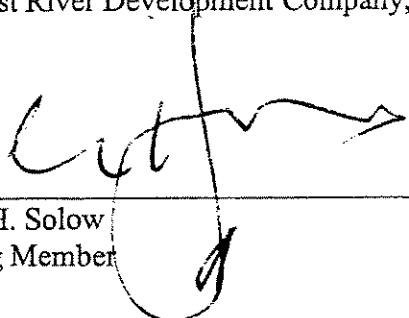
BCP SITE NO: \_\_\_\_\_ BCP SITE T&A CODE: \_\_\_\_\_ PROJECT MANAGER: \_\_\_\_\_

STATEMENT OF CERTIFICATION

EAST RIVER REALTY COMPANY, LLC

By: Solow East River Development Company, LLC, Managing Member

By:

  
\_\_\_\_\_  
Sheldon H. Solow  
Managing Member

Date: May 28, 2004

## **Brownfield Cleanup Program (BCP) Application**

### **Notes**

Note 1: In 1994, Con Edison and NYSDEC entered into an Order on Consent, executed on November 4, 1994, modified on March 27, 1995, and supplemented on October 23, 1997 (collectively, the "1994 Consent Order") that required Con Edison to clean up spills at a number of sites throughout its service territory, including spills at the Waterside Generating Station. All spills referenced in the 1994 Consent Order pertaining to the Waterside Generating Station have been cleaned up. These spills have been closed out by NYSDEC.

Note 2: Certain potential uses of the Site are consistent with applicable zoning requirements. Furthermore, the Agreement of Sale between Con Edison and the Developer, East River Realty Company, LLC, requires the Developer to seek zoning changes to achieve an FAR of 12, which are consistent with land use patterns in the area.

Note 3: Applicant does not believe that the project will result in a disproportionate adverse environmental impact on the community. For a full discussion of the potential environmental impacts of the project, please see the recently completed Final Generic Environmental Impact Statement (ENB February 04, 2004).

Note 4: The East River is proximate to the Site.



**TRC Companies, Inc.**

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION

ECL ARTICLE 27 / TITLE 14

10/9/03

## Applicant Information

NAME TRC Companies, Inc.

ADDRESS 1200 Wall Street West, 2<sup>nd</sup> Floor

CITY/TOWN Lyndhurst, NJ

ZIP CODE 07071

PHONE (201) 933-5541

FAX (201) 933-5601

E-MAIL [emalley@trcsolutions.com](mailto:emalley@trcsolutions.com)

NAME OF APPLICANT'S REPRESENTATIVE Edward J. Malley

ADDRESS 1200 Wall Street West, 2<sup>nd</sup> Floor

CITY/TOWN Lyndhurst, NJ

ZIP CODE 07071

PHONE (201) 933-5541

FAX (201) 933-5601

E-MAIL [emalley@trcsolutions.com](mailto:emalley@trcsolutions.com)

THE APPLICANT MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐ PARTICIPANT

An applicant who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

☒ VOLUNTEER

An applicant other than a participant, including an applicant whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, the applicant certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

Applicant Relationship to Property (check one):

☐ Previous Owner ☐ Current Owner ☐ Potential /Future Purchaser ☒ Other Remediation Contractor under VCO

## Current Owner/Operator Information

OWNER'S NAME (if different from applicant) Consolidated Edison Company of New York, Inc.

ADDRESS 4 Irving Place

CITY/TOWN New York, New York

ZIP CODE 10003

PHONE (212) 460-4600

FAX (212) 260-5713

E-MAIL [stelbenr@coned.com](mailto:stelbenr@coned.com)

OPERATOR'S NAME (if different from applicant) Remediation Contractor under the VCO: TRC Companies, Inc.

ADDRESS Same as applicant

CITY/TOWN Same as applicant

ZIP CODE Same as applicant

PHONE Same as applicant

FAX Same as applicant

E-MAIL Same as applicant

**Site Information**

SITE NAME The Greater Waterside Site (the "Site")

SITE ADDRESS (SEE ATTACHMENT A) CITY/TOWN (SEE ATTACHMENT A) ZIP CODE (SEE ATTACHMENT A)

COUNTY (SEE ATTACHMENT A)

SITE SIZE (ACRES) (SEE ATTACHMENT D)

LATITUDE (SEE ATTACHMENT A)

LONGITUDE (SEE ATTACHMENT A)

PLEASE ATTACH A COUNTY TAX MAP WITH IDENTIFIER NUMBERS, ALONG WITH ANY FIGURES NEEDED TO SHOW THE LOCATION AND BOUNDARIES OF THE SITE. ALSO INCLUDE A USGS 7.5 MINUTE QUAD MAP IN WHICH THE SITE IS LOCATED.

1. DO THE SITE BOUNDARIES CORRESPOND TO TAX MAP METES AND BOUNDS? (SEE ATTACHMENTS C-F) - ☐ YES ☒ NO  
IF NO, PLEASE ATTACH A METES AND BOUNDS DESCRIPTION OF THE SITE.
2. IS THE SITE PART OF A DESIGNATED BROWNFIELD OPPORTUNITY AREA PURSUANT TO GML970-R? IF YES, IDENTIFY AREA (NAME) \_\_\_\_\_ ☐ YES ☒ NO
3. IS THE SITE PART OF A DESIGNATED EN-Zone PURSUANT TO TL § 21(b)(6). IF YES, IDENTIFY AREA (NAME) \_\_\_\_\_ ☐ YES ☒ NO

**Applicant Eligibility Information (Please refer to ECL § 27-1407)**

1. ARE ANY ENFORCEMENT ACTIONS PENDING AGAINST THE APPLICANT REGARDING THIS SITE? ☐ YES ☒ NO
2. IS THE APPLICANT SUBJECT TO AN OUTSTANDING CLAIM BY THE SPILL FUND FOR THIS SITE? ☐ YES ☒ NO
3. HAS THE APPLICANT VIOLATED ANY PROVISION OF ECL ARTICLE 27? ☐ YES ☒ NO
4. HAS THE APPLICANT BEEN PREVIOUSLY DENIED ENTRY TO THE BCP? ☐ YES ☒ NO
5. HAS THE APPLICANT COMMITTED A NEGLIGENT OR INTENTIONALLY TORTIOUS ACT REGARDING HAZARDOUS WASTE OR PETROLEUM? ☐ YES ☒ NO
6. HAS THE APPLICANT BEEN CONVICTED OF A CRIMINAL OFFENSE THAT INVOLVES A VIOLENT FELONY, FRAUD, BRIBERY, PERJURY, THEFT, OR OFFENSE AGAINST PUBLIC ADMINISTRATION? ☐ YES ☒ NO
7. HAS THE APPLICANT KNOWINGLY FALSIFIED STATEMENTS OR CONCEALED MATERIAL FACTS IN A MATTER RELATED TO THE DEPARTMENT? ☐ YES ☒ NO
8. HAS THE APPLICANT, BASED ON THE PROVISIONS OF ECL ARTICLE 27-1407 (OR A SIMILAR PROVISION OF FEDERAL OR STATE LAW), COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR DENIAL OF A BCP APPLICATION? ☐ YES ☒ NO

**Site Eligibility Information (Please refer to ECL § 27-1405)**

1. DOES THE SITE MEET THE DEFINITION OF A BROWNFIELD SITE (REAL PROPERTY, THE REDEVELOPMENT OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OR POTENTIAL PRESENCE OF A HAZARDOUS WASTE, PETROLEUM, POLLUTANT, OR CONTAMINANT)? ☒ YES ☐ NO
2. IS THE SITE LISTED ON THE NATIONAL PRIORITIES LIST? ☐ YES ☒ NO
3. IS THE SITE LISTED ON THE NY'S REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES? IF YES, PLEASE PROVIDE: SITE # \_\_\_\_\_ CLASS # \_\_\_\_\_ ☐ YES ☒ NO
4. IS THE SITE SUBJECT TO A PERMIT UNDER ECL ARTICLE 27, TITLE 9, OTHER THAN AN INTERIM STATUS FACILITY? ☐ YES ☒ NO
5. IS THE SITE SUBJECT TO A CLEANUP ORDER UNDER NAVIGATION LAW ARTICLE 12 OR ECL ARTICLE 17 TITLE 10? (SEE NOTE 1) ☐ YES ☒ NO
6. IS THE SITE SUBJECT TO A STATE OR FEDERAL ENFORCEMENT ACTION RELATED TO HAZARDOUS WASTE OR PETROLEUM? (SEE NOTE 1) ☐ YES ☒ NO

**Project Description**

PLEASE ATTACH A DESCRIPTION OF THE PROJECT WHICH INCLUDES THE FOLLOWING COMPONENTS: (SEE ATTACHMENT B)

- PURPOSE AND SCOPE OF THE PROJECT
- ESTIMATED PROJECT SCHEDULE

**Site's Environmental History**

TO THE EXTENT THAT EXISTING INFORMATION/STUDIES/REPORTS ARE AVAILABLE TO THE APPLICANT, PLEASE ATTACH THE FOLLOWING:

1. **ENVIRONMENTAL DATA** (SEE ATTACHMENTS G AND H)  
A PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT PREPARED IN ACCORDANCE WITH ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), AND ALL ENVIRONMENTAL REPORTS RELATED TO CONTAMINANTS ON OR EMANATING FROM THE SITE.  
IF A FINAL INVESTIGATION REPORT IS INCLUDED, INDICATE WHETHER IT MEETS THE REQUIREMENTS OF ECL ARTICLE 27-1415(2):  
☒ YES ☐ NO
2. **OWNERS** (SEE ATTACHMENT H)  
A LIST OF PREVIOUS OWNERS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER LISTED. IF NO RELATIONSHIP, PUT "NONE").
3. **OPERATORS** (SEE ATTACHMENT H)  
A LIST OF PREVIOUS OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBER (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OPERATOR LISTED. IF NO RELATIONSHIP, PUT "NONE").

**Contact List Information (SEE ATTACHMENT I)**

PLEASE ATTACH, AT A MINIMUM, THE NAMES AND ADDRESSES OF THE FOLLOWING:

1. THE CHIEF EXECUTIVE OFFICER AND ZONING BOARD CHAIRPERSON OF EACH COUNTY, CITY, TOWN AND VILLAGE IN WHICH THE SITE IS LOCATED.
2. RESIDENTS, OWNERS, AND OCCUPANTS OF THE SITE AND PROPERTIES ADJACENT TO THE SITE.
3. LOCAL NEWS MEDIA FROM WHICH THE COMMUNITY TYPICALLY OBTAINS INFORMATION.
4. THE PUBLIC WATER SUPPLIER WHICH SERVICES THE AREA IN WHICH THE SITE IS LOCATED.
5. ANY PERSON WHO HAS REQUESTED TO BE PLACED ON THE SITE CONTACT LIST.
6. THE ADMINISTRATOR OF ANY SCHOOL OR DAY CARE FACILITY LOCATED ON OR NEAR THE SITE.
7. THE LOCATION OF A DOCUMENT REPOSITORY FOR THE PROJECT (E.G., LOCAL LIBRARY)

**Contaminant Information (SEE ATTACHMENT J)**

INDICATE KNOWN OR SUSPECTED CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN OR SUSPECTED TO HAVE BEEN AFFECTED:

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum					
Chlorinated Solvents					
Other VOCs					
SVOCs					
Metals					
Pesticides					
PCBs					
Other*					

\*Please describe: \_\_\_\_\_

**Land Use Factors (Please refer to ECL § 27-1415(3))**

Current Use: ☐ Residential ☐ Commercial ☒ Industrial ☐ Other \_\_\_\_\_

Future Use: ☒ Residential ☒ Commercial ☐ Industrial ☐ Other \_\_\_\_\_

Please check the appropriate boxes and provide an explanation as an attachment if appropriate.

	Yes	No	Unknown
1. Do current historical and/or recent development patterns support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the proposed use consistent with applicable zoning laws/maps? (See Note 2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



	Yes	No	Unknown
3. Is the proposed use consistent with applicable brownfield opportunity area designations? (See GML 970-r)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, other adopted land use plans?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)). (See Note 3)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Are there any federal or State land use designations relating to this site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Do the population growth patterns and projections support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the site accessible to existing infrastructure?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species proximate to the site? (See Note 4)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are there floodplains proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Are there any institutional controls currently applicable to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas. (SEE ATTACHMENT K)			
14. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas. (SEE ATTACHMENT L)			
15. Describe on attachment the geography and geology of the site. (SEE ATTACHMENT M)			
(Note: the 16 <sup>th</sup> criteria relates to comments from the public, which would not be received at the time of application)			

### Statement of Certification

(By applicant who is an individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

(By an applicant other than an individual) (See attached Statement of Certification)

I certify that I am SR. VP (title) of TRC Companies, Inc.; that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: 5/23/04 Signature: [Signature] Print Name: MICHAEL C. SALMON

### SUBMITTAL INFORMATION:

Four (4) complete copies, one with original signatures, are required.

- Three (3) of the copies, one with original signatures, must be sent to:  
Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

- One (1) copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our website for the address of our regional offices: <http://www.dec.state.ny.us/website/dec/index.html>

FOR DEPARTMENT USE ONLY

BCP SITE NO: \_\_\_\_\_ BCP SITE T&A CODE: \_\_\_\_\_ PROJECT MANAGER: \_\_\_\_\_

## **Brownfield Cleanup Program (BCP) Application**

### **Notes**

Note 1: In 1994, Con Edison and NYSDEC entered into an Order on Consent, executed on November 4, 1994, modified on March 27, 1995, and supplemented on October 23, 1997 (collectively, the "1994 Consent Order") that required Con Edison to clean up spills at a number of sites throughout its service territory, including spills at the Waterside Generating Station. All spills referenced in the 1994 Consent Order pertaining to the Waterside Generating Station have been cleaned up. These spills have been closed out by NYSDEC.

Note 2: Certain potential uses of the Site are consistent with applicable zoning requirements. Furthermore, the Agreement of Sale between Con Edison and the Developer, East River Realty Company, LLC, requires the Developer to seek zoning changes to achieve an FAR of 12, which are consistent with land use patterns in the area.

Note 3: Applicant does not believe that the project will result in a disproportionate adverse environmental impact on the community. For a full discussion of the potential environmental impacts of the project, please see the recently completed Final Generic Environmental Impact Statement (ENB February 04, 2004).

Note 4: The East River is proximate to the Site.



# **Consolidated Edison Company of New York, Inc.**

## NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION

ECL ARTICLE 27 / TITLE 14

10/9/03

<b>Applicant Information</b>			
NAME Consolidated Edison Company of New York, Inc.			
ADDRESS 4 Irving Place			
CITY/TOWN New York, NY		ZIP CODE 10003	
PHONE (212) 460-4600	FAX	E-MAIL	
NAME OF APPLICANT'S REPRESENTATIVE Robert P. Stelben			
ADDRESS 4 Irving Place			
CITY/TOWN New York, NY		ZIP CODE 10003	
PHONE (212) 460-2786	FAX (212) 260-5713	E-MAIL <a href="mailto:stelbenr@coned.com">stelbenr@coned.com</a>	
THE APPLICANT MUST CERTIFY THAT IT IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:			
<input checked="" type="checkbox"/> <b>PARTICIPANT</b> An applicant who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.		<input type="checkbox"/> <b>VOLUNTEER</b> An applicant other than a participant, including an applicant whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.	
NOTE: By checking this box, the applicant certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.			
Applicant Relationship to Property (check one):			
<input type="checkbox"/> Previous Owner <input checked="" type="checkbox"/> Current Owner <input type="checkbox"/> Potential/Future Purchaser <input type="checkbox"/> Other			
<b>Current Owner/Operator Information</b>			
OWNER'S NAME (if different from applicant) (Same as above)			
ADDRESS (Same as above)			
CITY/TOWN (Same as above)		ZIP CODE (Same as above)	
PHONE (Same as above)	FAX (Same as above)	E-MAIL (Same as above)	
OPERATOR'S NAME (if different from applicant) Remediation Contractor under the VCO: TRC Companies, Inc.			
ADDRESS 1200 Wall Street West, 2 <sup>nd</sup> Floor			
CITY/TOWN Lyndhurst, NJ		ZIP CODE 07071	
PHONE (201) 933-5541	FAX (201) 933-5601	E-MAIL <a href="mailto:emalloy@tresolutions.com">emalloy@tresolutions.com</a>	

**Site Information**

SITE NAME The Greater Waterside Site (the "Site")

SITE ADDRESS (SEE ATTACHMENT A) CITY/TOWN (SEE ATTACHMENT A) ZIP CODE (SEE ATTACHMENT A)

COUNTY (SEE ATTACHMENT A) SITE SIZE (ACRES) (SEE ATTACHMENT D)

LATITUDE (SEE ATTACHMENT A) LONGITUDE (SEE ATTACHMENT A)

PLEASE ATTACH A COUNTY TAX MAP WITH IDENTIFIER NUMBERS, ALONG WITH ANY FIGURES NEEDED TO SHOW THE LOCATION AND BOUNDARIES OF THE SITE. ALSO INCLUDE A USGS 7.5 MINUTE QUAD MAP IN WHICH THE SITE IS LOCATED.

1. DO THE SITE BOUNDARIES CORRESPOND TO TAX MAP METES AND BOUNDS? (SEE ATTACHMENTS C-F)  
IF NO, PLEASE ATTACH A METES AND BOUNDS DESCRIPTION OF THE SITE. ☐ YES ☒ NO
2. IS THE SITE PART OF A DESIGNATED BROWNFIELD OPPORTUNITY AREA PURSUANT TO GML970-R? IF YES, IDENTIFY AREA (NAME) ☐ YES ☒ NO
3. IS THE SITE PART OF A DESIGNATED EN-Zone PURSUANT TO TL § 21(b)(6).  
IF YES, IDENTIFY AREA (NAME) ☐ YES ☒ NO

**Applicant Eligibility Information (Please refer to ECL § 27-1407)**

1. ARE ANY ENFORCEMENT ACTIONS PENDING AGAINST THE APPLICANT REGARDING THIS SITE? (SEE NOTE 1) ☐ YES ☒ NO
2. IS THE APPLICANT SUBJECT TO AN OUTSTANDING CLAIM BY THE SPILL FUND FOR THIS SITE? ☐ YES ☒ NO
3. HAS THE APPLICANT VIOLATED ANY PROVISION OF ECL ARTICLE 27? (SEE NOTE 5) ☒ YES ☐ NO
4. HAS THE APPLICANT BEEN PREVIOUSLY DENIED ENTRY TO THE BCP? ☐ YES ☒ NO
5. HAS THE APPLICANT COMMITTED A NEGLIGENT OR INTENTIONALLY TORTIOUS ACT REGARDING HAZARDOUS WASTE OR PETROLEUM? ☐ YES ☒ NO
6. HAS THE APPLICANT BEEN CONVICTED OF A CRIMINAL OFFENSE THAT INVOLVES A VIOLENT FELONY, FRAUD, BRIBERY, PERJURY, THEFT, OR OFFENSE AGAINST PUBLIC ADMINISTRATION? (SEE NOTE 6) ☒ YES ☐ NO
7. HAS THE APPLICANT KNOWINGLY FALSIFIED STATEMENTS OR CONCEALED MATERIAL FACTS IN A MATTER RELATED TO THE DEPARTMENT? ☐ YES ☒ NO
8. HAS THE APPLICANT, BASED ON THE PROVISIONS OF ECL ARTICLE 27-1407 (OR A SIMILAR PROVISION OF FEDERAL OR STATE LAW), COMMITTED AN ACT OR FAILED TO ACT, AND SUCH ACT OR FAILURE TO ACT COULD BE THE BASIS FOR DENIAL OF A BCP APPLICATION? ☐ YES ☒ NO

**Site Eligibility Information (Please refer to ECL § 27-1405)**

1. DOES THE SITE MEET THE DEFINITION OF A BROWNFIELD SITE (REAL PROPERTY, THE REDEVELOPMENT OR REUSE OF WHICH MAY BE COMPLICATED BY THE PRESENCE OR POTENTIAL PRESENCE OF A HAZARDOUS WASTE, PETROLEUM, POLLUTANT, OR CONTAMINANT)? ☒ YES ☐ NO
2. IS THE SITE LISTED ON THE NATIONAL PRIORITIES LIST? ☐ YES ☒ NO
3. IS THE SITE LISTED ON THE NYS REGISTRY OF INACTIVE HAZARDOUS WASTE DISPOSAL SITES?  
IF YES, PLEASE PROVIDE: SITE # \_\_\_\_\_ CLASS # \_\_\_\_\_ ☐ YES ☒ NO
4. IS THE SITE SUBJECT TO A PERMIT UNDER ECL ARTICLE 27, TITLE 9, OTHER THAN AN INTERIM STATUS FACILITY? ☐ YES ☒ NO
5. IS THE SITE SUBJECT TO A CLEANUP ORDER UNDER NAVIGATION LAW ARTICLE 12 OR ECL ARTICLE 17 TITLE 10? (SEE NOTE 1) ☐ YES ☒ NO
6. IS THE SITE SUBJECT TO A STATE OR FEDERAL ENFORCEMENT ACTION RELATED TO HAZARDOUS WASTE OR PETROLEUM? (SEE NOTE 1) ☐ YES ☒ NO

**Project Description**

PLEASE ATTACH A DESCRIPTION OF THE PROJECT WHICH INCLUDES THE FOLLOWING COMPONENTS: (SEE ATTACHMENT B)

- PURPOSE AND SCOPE OF THE PROJECT
- ESTIMATED PROJECT SCHEDULE

**Site's Environmental History**

TO THE EXTENT THAT EXISTING INFORMATION/STUDIES/REPORTS ARE AVAILABLE TO THE APPLICANT, PLEASE ATTACH THE FOLLOWING:

1. **ENVIRONMENTAL DATA** (SEE ATTACHMENTS G AND H)  
A PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORT PREPARED IN ACCORDANCE WITH ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), AND ALL ENVIRONMENTAL REPORTS RELATED TO CONTAMINANTS ON OR EMANATING FROM THE SITE.  
IF A FINAL INVESTIGATION REPORT IS INCLUDED, INDICATE WHETHER IT MEETS THE REQUIREMENTS OF ECL ARTICLE 27-1415(2):

☒ YES ☐ NO

2. **OWNERS** (SEE ATTACHMENT H)  
A LIST OF PREVIOUS OWNERS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OWNER LISTED. IF NO RELATIONSHIP, PUT "NONE").
3. **OPERATORS** (SEE ATTACHMENT H)  
A LIST OF PREVIOUS OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBER (DESCRIBE APPLICANT'S RELATIONSHIP, IF ANY, TO EACH PREVIOUS OPERATOR LISTED. IF NO RELATIONSHIP, PUT "NONE").

**Contact List Information (SEE ATTACHMENT I)**

PLEASE ATTACH, AT A MINIMUM, THE NAMES AND ADDRESSES OF THE FOLLOWING:

1. THE CHIEF EXECUTIVE OFFICER AND ZONING BOARD CHAIRPERSON OF EACH COUNTY, CITY, TOWN AND VILLAGE IN WHICH THE SITE IS LOCATED.
2. RESIDENTS, OWNERS, AND OCCUPANTS OF THE SITE AND PROPERTIES ADJACENT TO THE SITE.
3. LOCAL NEWS MEDIA FROM WHICH THE COMMUNITY TYPICALLY OBTAINS INFORMATION.
4. THE PUBLIC WATER SUPPLIER WHICH SERVICES THE AREA IN WHICH THE SITE IS LOCATED.
5. ANY PERSON WHO HAS REQUESTED TO BE PLACED ON THE SITE CONTACT LIST.
6. THE ADMINISTRATOR OF ANY SCHOOL OR DAY CARE FACILITY LOCATED ON OR NEAR THE SITE.
7. THE LOCATION OF A DOCUMENT REPOSITORY FOR THE PROJECT (E.G., LOCAL LIBRARY)

**Contaminant Information (SEE ATTACHMENT J)**

INDICATE KNOWN OR SUSPECTED CONTAMINANTS AND THE MEDIA WHICH ARE KNOWN OR SUSPECTED TO HAVE BEEN AFFECTED:

Contaminant Category	Soil	Groundwater	Surface Water	Sediment	Soil Gas
Petroleum					
Chlorinated Solvents					
Other VOCs					
SVOCs					
Metals					
Pesticides					
PCBs					
Other*					

\*Please describe: \_\_\_\_\_

**Land Use Factors (Please refer to ECL § 27-1415(3))**

Current Use: ☐ Residential ☐ Commercial ☒ Industrial ☐ Other \_\_\_\_\_

Future Use: ☒ Residential ☒ Commercial ☐ Industrial ☐ Other \_\_\_\_\_

Please check the appropriate boxes and provide an explanation as an attachment if appropriate.

	Yes	No	Unknown
1. Do current historical and/or recent development patterns support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the proposed use consistent with applicable zoning laws/maps? (See Note 2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No	Unknown
3. Is the proposed use consistent with applicable brownfield opportunity area designations? (See GML 970-r)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, other adopted land use plans?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Are there any Environmental Justice Concerns? (See §27-1415(3)(p)). (See Note 3)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Are there any federal or State land use designations relating to this site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Do the population growth patterns and projections support the proposed use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Is the site accessible to existing infrastructure?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species proximate to the site? (See Note 4)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Are there floodplains proximate to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Are there any institutional controls currently applicable to the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas. (SEE ATTACHMENT K)			
14. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas. (SEE ATTACHMENT L)			
15. Describe on attachment the geography and geology of the site. (SEE ATTACHMENT M)			
(Note: the 16th criteria relates to comments from the public, which would not be received at the time of application)			

### Statement of Certification

(By applicant who is an individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_

(By an applicant other than an individual)

I certify that I am Vice President of Consolidated Edison Company of New York, Inc.; that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: 5/27/06 Signature:  Print Name: Robert P. Stelben

### SUBMITTAL INFORMATION:

Four (4) complete copies, one with original signatures, are required.

- Three (3) of the copies, one with original signatures, must be sent to:  
Chief, Site Control Section  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7020

- One (1) copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our website for the address of our regional offices: <http://www.dec.state.ny.us/website/der/index.html>

FOR DEPARTMENT USE ONLY

BCP SITE NO: \_\_\_\_\_ BCP SITE T&A CODE: \_\_\_\_\_ PROJECT MANAGER: \_\_\_\_\_



## **Brownfield Cleanup Program (BCP) Application**

### **Notes**

Note 1: In 1994, Con Edison and NYSDEC entered into an Order on Consent, executed on November 4, 1994, modified on March 27, 1995, and supplemented on October 23, 1997, (collectively, the "1994 Consent Order") that required Con Edison to clean up spills at a number of sites throughout its service territory, including spills at the Waterside Generating Station. All spills referenced in the 1994 Consent Order pertaining to the Waterside Generating Station have been cleaned up. These spills have been closed out by NYSDEC.

Note 2: Certain potential uses of the Site are consistent with applicable zoning requirements. Furthermore, the Agreement of Sale between Con Edison and the Developer, East River Realty Company, LLC, requires the Developer to seek zoning changes to achieve an FAR of 12, which are consistent with land use patterns in the area.

Note 3: Applicant does not believe that the project will result in a disproportionate adverse environmental impact on the community. For a full discussion of the potential environmental impacts of the project, please see the recently completed Final Generic Environmental Impact Statement (ENB February 04, 2004).

Note 4: The East River is proximate to the Site.

Note 5: Con Edison has in the past been charged by NYSDEC with violations of Article 27 of the ECL. However, these violations have been resolved or are being resolved to NYSDEC's satisfaction. Further, NYSDEC has not relied on these violations as a basis for denying Con Edison permits under Article 27 of the ECL or any other provision of the ECL.

Note 6: In 1995, Con Edison pleaded guilty in 1995 to four counts involving the failure to report the release of asbestos from an August 1989 steam explosion in the Gramercy Park section of Manhattan, making false statements in connection therewith, and conspiracy to defraud the United States. Con Edison paid the fine and completed the probation to which it was sentenced by the United States District Court for the Southern District of New York. Con Edison has disclosed this conviction in its past application to NYSDEC for Waste Transporter Permits under Article 27 of the ECL and NYSDEC has not relied on these violations as a basis for denying Con Edison such permits.



## **Attachment A**

### **Property Addresses and VCP Numbers**

ATTACHMENT A

PROPERTY ADDRESSES AND VCP NUMBERS

COLLECTIVELY, THE GREATER WATERSIDE SITE

- I. Property Name and Location -- Voluntary Cleanup Program Index No. D2-0001-01-03
1. Parking Lot  
685 First Avenue  
Manhattan, New York County, New York 10016  
Block 945, Lot 33 (partial)  
Latitude N40° 44.822'                      Longitude W73° 58.261'  
VCP Site Number: V-00-429-2
  2. 708 Office Building  
708 First Avenue  
Manhattan, New York County, New York 10017  
Block 970, Lot 1 (partial)  
Latitude N40° 44.847'                      Longitude W73° 58.210'  
VCP Site Number: V-00-432-2
  3. Waterside Generating Station  
700 First Avenue  
Manhattan, New York County, New York 10017  
Block 970, Lot 1 (partial)  
Latitude N40° 44.837'                      Longitude W73° 58.203'  
VCP Site Number: V-00-431-2

## **Attachment B**

### **Project Description**

## ATTACHMENT B

### PROJECT DESCRIPTION

#### 1. Project Purpose and Scope

The purpose of the project is to transfer from the Voluntary Cleanup Program to the Brownfield Cleanup Program in order to complete a remedial scope of work at each property comprising the Greater Waterside Site. The scope of work for the Site is specified in the referenced NYSDEC-approved Remediation Work Plans for the Site for the properties located at 685, 700 and 708 First Avenue.

The objective of the work is to ready the Site for unrestricted development for residential and commercial use to a depth which is the higher of: the top of competent rock, the mean high water table, or a depth of 16 feet below grade ("Development Depth"). At and above that depth, site conditions will be remediated such that no deed restrictions, institutional or engineering controls or further consents, approvals or authorizations will be required by NYSDEC.

It is the further objective that, following completion of the site remediation activities and subject to any ground water monitoring that may be required, the Site will be in a condition to be improved to the Development Depth, including the installation of piles to the top of bedrock or caissons and dewatering as necessary, without the need for any special worker health and safety precautions or equipment during construction activities conducted above the Development Depth.

#### 2. Estimated Project Schedule

The estimated project schedule is provided in the above-mentioned NYSDEC-approved Remediation Work Plans for the properties comprising the Greater Waterside Site, and in the monthly updates provided by TRC to NYSDEC.

## **Attachment C**

### **(Site Information)**

## **Site**

## **Surveys**

# **Attachment D**

## **(Site Information)**

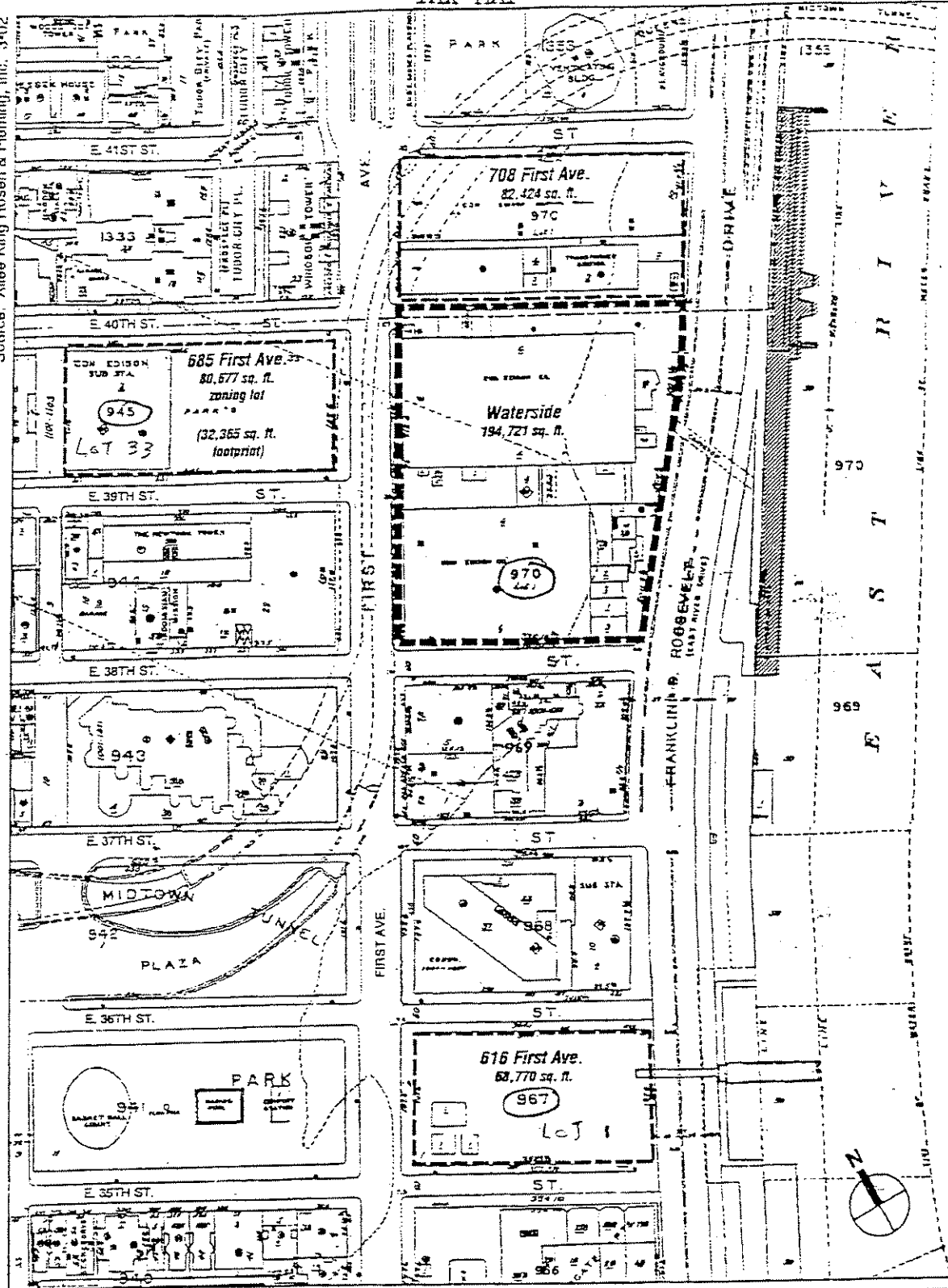
### **Tax Map**



ATTACHMENT D

TAX MAP

Source: Allee Khay Rosen & Fleming, Inc. 3-02



- 2007 Disposition Parcel Boundary
- 2011 Disposition Parcel Boundary
- Project Related Esplanade

0 200 FEET  
SCALE

Site Locations  
Figure S-2

## **Attachment E** **(Site Information)**

### **Metes and Bounds**

ATTACHMENT E

708 FIRST AVENUE

PROPERTY DESCRIPTION

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly line of East 41<sup>st</sup> Street with the easterly line of First Avenue;

RUNNING THENCE easterly, along the southerly line of East 41<sup>st</sup> Street, 422'-10" to the corner formed by the intersection of the southerly line of East 41<sup>st</sup> Street with the westerly line of Franklin D. Roosevelt Drive;

THENCE southerly, along the westerly line of Franklin D. Roosevelt Drive, 161'-9 5/8" to a point of curvature therein;

THENCE southerly, still along the westerly line of Franklin D. Roosevelt Drive on the arc of a circle curving to the right having a radius of 2431'-8" and a central angle of 0°-50'-55", 36'-0 1/4";

THENCE westerly, parallel with the southerly line of East 41<sup>st</sup> Street, 411'-7 3/8" to a point in the easterly line of First Avenue;

THENCE northerly, along the easterly line of First Avenue, 197'-6" to the point or place of BEGINNING.

**ATTACHMENT E**

**700 FIRST AVENUE (WATERSIDE)**

**PROPERTY DESCRIPTION**

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of East 38<sup>th</sup> Street with the easterly line of First Avenue;

RUNNING THENCE northerly along the easterly line of First Avenue, 515'-0";

THENCE easterly, along with the northerly line of East 38<sup>th</sup> Street, 411'-7 3/8" to a point in the westerly line of Franklin D. Roosevelt Drive;

THENCE southerly, along the westerly line of Franklin D. Roosevelt Drive on the arc of a circle curving to the right having a radius of 2431'-8" and a central angle of 6°-13'-3", 264'-2 5/8";

THENCE southerly, still along the westerly line of Franklin D. Roosevelt Drive, 56'-4 1/4" to an angle point therein;

THENCE easterly, still along the westerly line of Franklin D. Roosevelt Drive and parallel with the northerly line of East 38<sup>th</sup> Street, 1'-2 3/8" to an angle point therein.

THENCE southerly, still along the westerly line of Franklin D. Roosevelt Drive, 200'-3 1/8" to the corner formed by the intersection of the northerly line of East 38<sup>th</sup> Street with the westerly line of Franklin D. Roosevelt Drive;

THENCE westerly, along the northerly line of East 38<sup>th</sup> Street, 336'-10 3/8" to the point or place of BEGINNING.

ATTACHMENT E  
PORTION OF 685 FIRST AVENUE<sup>1</sup>

PROPERTY DESCRIPTION

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly line of East 39<sup>th</sup> Street with the westerly line of First Avenue;

RUNNING THENCE westerly, along the northerly line of East 39<sup>th</sup> Street, 163'-10½";

THENCE northerly, parallel with the westerly line of First Avenue, 197'-6" to a point in the southerly line of East 40<sup>th</sup> Street;

THENCE easterly, along the southerly line of East 40<sup>th</sup> Street, 163'-10½ " to the corner formed by the intersection of the southerly line of East 40<sup>th</sup> Street with the westerly line of First Avenue;

THENCE southerly, along the westerly line of First Avenue, 197'-6" to the point or place of BEGINNING.

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<sup>1</sup> This does not include the portion of 685 First Avenue to be retained by Con Edison under the Sale Agreement.

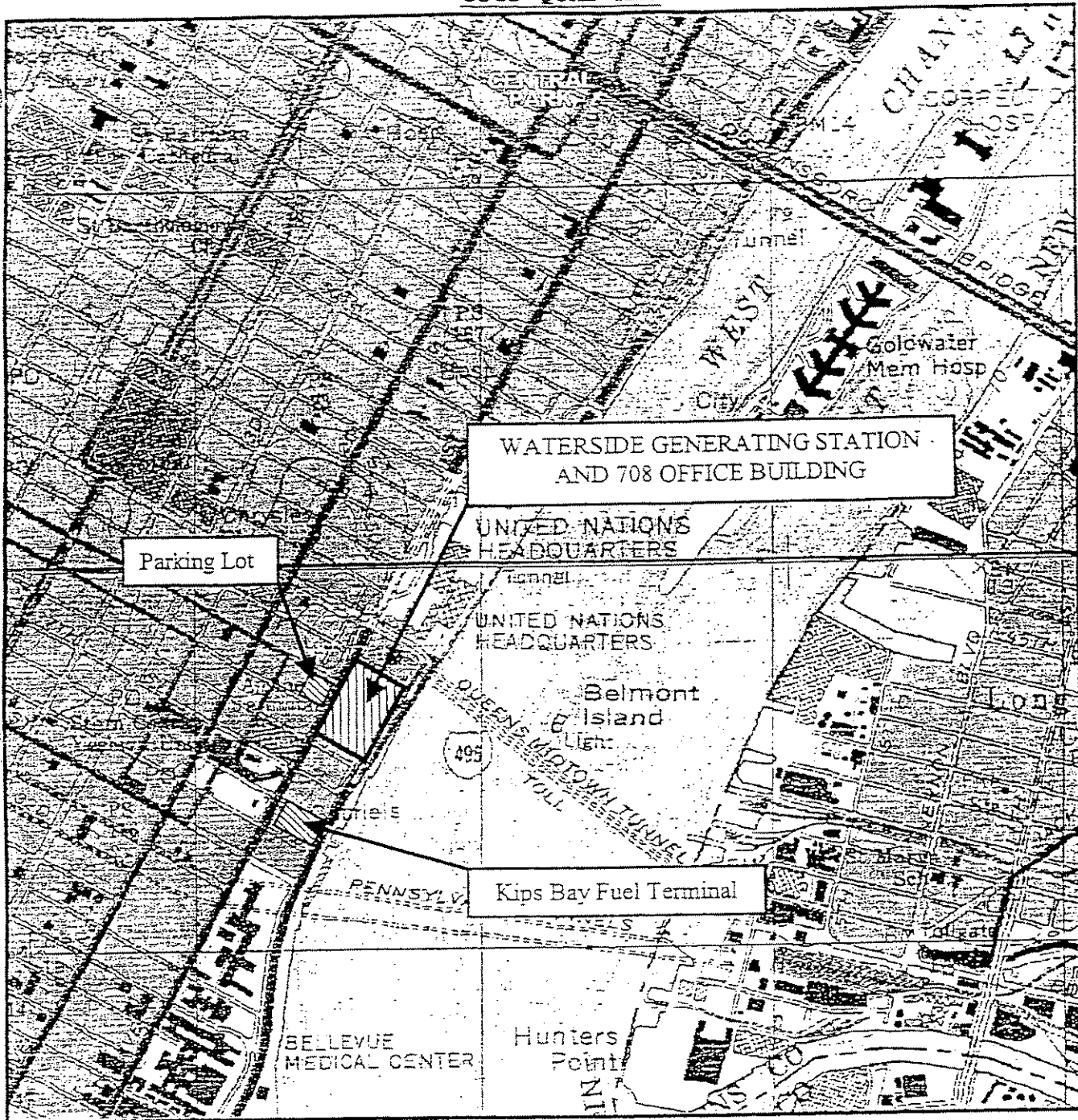
## **Attachment F** **(Site Information)**

### **USGS 7.5 Minute** **Quad Maps**



## ATTACHMENT F

## USGS QUAD MAP



SOURCE: 3-D Topoquads, Copyright 1999, DeLorme, Yarmouth, ME 04096. Source Data: USGS 7.5-minute topographic map quadrangles for Brooklyn, NY and Central Park, NY-NJ.

SCALE: 1:14,000



First Avenue Properties  
General Location Map

Figure 1

TRC Project Number: 25-10-0010-00000

**TRC**

## **Attachment G**

### **Voluntary Cleanup Program Agreement**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

VOLUNTARY CLEANUP ORDER /INDEX NUMBER: D2-0001-01-03

In the Matter of the Implementation of a Remedial Response Program for:

TRC East Side Properties (Four Sites), N.Y. County (Manhattan), City of New York

by:

TRC Companies, Inc. (RESPONDENT TRC)

and,

FSM East River Associates LLC (RESPONDENT FSM)

Site Numbers V-00429-2  
V-00430-2  
V-00431-2  
V-00432-2  
EDMS 25308 v3

WHEREAS, the Department is responsible for enforcement of the ECL and the NL and such laws provide the Department authority to enter into this Order;

WHEREAS, the Department has established a Voluntary Cleanup Program to address the environmental, legal and financial barriers that hinder the redevelopment and reuse of contaminated properties;

WHEREAS, Respondent TRC represents, and the Department relied upon such representations in entering into this Order, that Respondent TRC's involvement with the sites is limited to the following: Respondent TRC has or expects to take a possessory interest in the four related Sites subject to this Order from the current owner for the purpose of conducting only activities pursuant to the work plans or in preparation for or association with those; and, Respondent TRC will not undertake any redevelopment on the Sites and will be considered a responsible party as an innocent operator with respect to existing contamination upon taking a possessory interest in a site;

WHEREAS, Respondent FSM represents that it is expected to become the fee owner of the Sites referenced herein contingent upon the occurrence of certain future events;

WHEREAS, Respondent TRC represents, and the Department relied upon such representations in entering into this Order; that (A) portions of the Sites are subject to obligations imposed under the following Administrative Orders on Consent between the current owner of the Sites and the Department: (i) NYSDEC Index No. R2-1023-88-06 et seq., dated November 4, 1994 and (ii) NYSDEC Index No. D2-0003-96-12 et seq., dated October 23, 1997 (the "Existing

Consent Orders”) and (B) Respondent TRC will perform the outstanding investigation, remedial and reporting obligations imposed under the Existing Consent Orders with regard to the Sites as part of the work under this Order. Nothing contained herein constitutes a release for the named Respondent in the above referenced Existing Consent Orders from any obligations incurred pursuant to those Orders;

WHEREAS, the parties are entering into this Order in order to set forth a process through which the Department will approve and the Volunteer will implement activities designed to address in whole or in part environmental contamination at the Site; and,

WHEREAS, the Department has determined that it is in the public interest to enter into this Order as a means to address environmental issues at the sites with private funds while ensuring the protection of human health and the environment;

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING AND IT IS SO ORDERED:

I. Site Specific Definitions

For purposes of this Order, the terms set forth in the Glossary attached to, and made a part of, this Order shall have the meanings ascribed to them in that Glossary. In addition, for purposes of this Order, the following terms shall have the following meanings:

A. “Contemplated Use”: Unrestricted uses for each of the Sites.

B. “Existing Contamination”: Existing contamination is described as follows for each Site subject to this Order:

1. Parking Lot, 685 First Avenue, (V-00429-2); soil and groundwater contaminants including, but not limited to, lead, petroleum, gasoline and associated breakdown products associated with the operation of a former underground storage tank (“UST”) and fleet fueling, including separate phase hydrocarbons (“SPH”) and benzene, toluene, ethylbenzene and xylene (“BTEX”), as set forth in,

- “Phase I Environmental Site Assessment, 40<sup>th</sup> Street and First Avenue Property,” Foster Wheeler, September 1998;

- “Underground Storage Tank Closure Report, East 40<sup>th</sup> Street,” Clean Venture, Inc., December 1998;

- “Investigation Report 39<sup>th</sup> Street Parking Lot, Roy F. Weston, Inc.”, June 1999;

- "Site Investigation Report, 1<sup>st</sup> Avenue & 39<sup>th</sup> Street," Jacques Whitford Companies, Inc., June 2000;

2. Kips Bay Fuel Terminal, 616 First Avenue, (V-00430-2); Soil and groundwater contaminants including, but not limited to, petroleum and associated breakdown products, including non-aqueous phase liquid ("NAPL") derived from fuel oil UST and pipeline operations, polychlorinated biphenyls ("PCB") from transformers in soil, polynuclear aromatic hydrocarbons ("PAH") from historic fill materials in site soils as set forth in,

- "Phase I Environmental Site Assessment, Kips Bay Fuel Oil Terminal," Foster Wheeler Environmental Corp., September 1998;

- "Phase II Environmental Site Assessment, Kips Bay Oil Terminal," GZA GeoEnvironmental, Inc., March 2000;

- "Well Gauging Monitoring Report, Kips Bay Fuel Oil Terminal," Jacques Whitford Company, November 2000;

3. 708 Office Bldg., 708 First Avenue, (V-00431-2); Soil and groundwater contaminants including but not limited, mercury, barium, PAH, VOC and petroleum related compounds including but not limited to, BTEX from manufactured gas plant ("MGP") operations and petroleum and antifreeze spills as set forth in,

- "Phase I Environmental Site Assessment, 708 First Avenue," Foster Wheeler Environmental Corp., December 1998;

- "Phase II Environmental Site Assessment, Waterside Generating Station and 708 First Avenue Properties," Foster Wheeler Environmental Corp., March 2000; and,

4. Waterside Generating Station, 700 First Avenue, (V-00432-2), soil contamination including but not limited to BTEX, PAH, naphthalene and PCB AND groundwater contamination including but not limited to BTEX, PAH, volatile organic compounds ("VOC") and heavy metals as set forth in,

- "Phase I Environmental Site Assessment, Waterside Generating Station," Foster Wheeler Environmental Corp., January 2000;

- "Phase II Environmental Site Assessment, Waterside Generating Station and 708 First Avenue Properties, foster Wheeler Environmental Corp., March 2000.

The term also includes contamination encountered during the course of this Order's implementation, the nature and extent of which were unknown or inadequately characterized as of the effective date of this Order, but which shall have been fully characterized to the Department's satisfaction.



C. "Site": EACH OF those four properties described below shall be a Site:

1. Parking Lot, 685 FIRST AVENUE, partial Block 945, Lot 33 (V-00429-2). The Site is bordered by East 40<sup>th</sup> Street to the north, First Avenue to the east, East 39<sup>th</sup> Street to the south and a Con Ed substation to the west;

2. Kips Bay Fuel Terminal, 616 First Avenue, Block 967, Lot 1 (V-00430-2). The Site is bordered by East 36<sup>th</sup> street to the north, the Franklin D. Roosevelt ("FDR") Drive to the east, East 35<sup>th</sup> Street to the south, and First Avenue to the west;

3. 708 Office Bldg., 708 First Avenue, Block 970, Lot 1 (partial) (V-00431-2). The Site is bordered by East 41<sup>st</sup> Street to the north, the FDR Drive to the east, the Waterside generating station (East 40<sup>th</sup> Street) to the south, and First Avenue to the west; and,

4. Waterside Generating Station, Block 970, Lot 1 (partial) (V-00432-2). The Site is bordered by East 40<sup>th</sup> Street and buildings associated with Con Edison's 708 first Avenue Site to the north, FDR Drive to the east, 38<sup>th</sup> Street to the south, and First Avenue to the west.

5. The parties to this Order understand that each property described in Section I.C, herein, will be treated as a "Site", and a separate Remediation Work Plan, within the meaning of Section II.A.3 herein, will be submitted for each Site, and a separate final report, pursuant to Section II.D corresponding to each Remediation Work Plan will be submitted for Department approval, the parties have agreed that each such Remediation Work Plan will be subject to the provisions of Section II.E.1.

6. Exhibit "A" of this Order is a map of the Sites showing the general locations.

D. "RESPONDENT TRC": TRC Companies, Inc. is a Delaware Corporation doing business in the State of Connecticut with offices located at 5 Waterside Crossing, Windsor, Connecticut 06095.

E. "Respondent FSM": Respondent FSM Associates LLC is a New York limited liability company with offices located at 299 Park Avenue, New York, N.Y. 10171.

F. "Volunteer": Respondent TRC and Respondent FSM, collectively and individually.

## II. Development, Performance and Reporting of Work Plans

### A. Work Plan Labels

The work plans ("Work Plan" or "Work Plans") under this Order shall be captioned as follows:

1. "Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination at the Site;



2. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;
3. "Remediation Work Plan" if the Work Plan provides for the Site's remediation to cleanup levels sufficient to allow the Contemplated Use of the Site to proceed; or
4. "OM&M Work Plan" if the Work Plan provides for post-remedial construction operation, monitoring and maintenance.

B. Submission/Implementation of Work Plans

1. Proposed Work Plans shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate a Work Plan. A Professional Engineer must prepare, sign, and seal all Work Plans other than an Investigation Work Plan. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be incorporated into and become an enforceable part of this Order and shall be implemented in accordance with the schedule contained therein. If a proposed Work Plan is rejected by the Department, Volunteer shall elect in writing within 10 Days to: (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke the dispute resolution provisions of this Order pursuant to Paragraph XIII; or (iv) terminate this Order pursuant to the provisions set forth in Paragraph XII.

2. During all field activities, Volunteer shall have on-site a representative who is qualified to supervise the activities undertaken and who may be an outside consultant retained by Volunteer to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and enforceable under this Order. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Volunteer invokes the dispute resolution provisions of this Order pursuant to Paragraph XIII, either party may terminate this Order pursuant to Paragraph XII.

D. Submission of Final Reports

In accordance with the schedule contained in a Work Plan, Volunteer shall submit a final report containing on the cover page the caption of that Work Plan as set forth in Subparagraph II.A of this Order. The final report pertaining to that Work Plan's implementation shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; "as-built" drawings, to the extent necessary, showing all changes made during construction. Additionally, the final report relative to the Investigation Work Plan shall contain a certification by the person with primary responsibility for the day to day performance of the activities under

this Order that those activities were performed in full accordance with the Investigation Work Plan and all other final reports must contain such certification made by a professional engineer with primary responsibility for the day to day performance of the activities under this Order.

An OM&M Work Plan, if necessary, shall be submitted with the final report relative to an IRM Work Plan or a Remediation Work Plan.

E. Review of Submittals

1. The Department shall timely notify Volunteer in writing of its approval or disapproval of each submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval and may request Volunteer to modify or expand the submittal. Within 30 Days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall either make a revised submittal that corrects the stated deficiencies or elect to terminate the Order pursuant to Paragraph XII. If the Volunteer submits a revised submittal and it is disapproved, the Department and Volunteer may pursue whatever remedies may be available under this Order or under law.

3. Within 30 Days of the Department's approval of a final report, such report must be submitted to the Department in an electronic format acceptable to the Department.

F. Department's Determination of Need for Remediation

In addition to the Department's approval of the final report, the Department will determine upon its approval of each final report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed to allow the Site to be used for the Contemplated Use.

1. If the Department determines that remediation, or additional remediation, is not needed to allow the Site to be used for the Contemplated Use, the Department shall provide Volunteer with the Release described in Subparagraph II.H.

2. If the Department determines that remediation, or additional remediation, is needed to allow the Site to be used for the Contemplated Use, Volunteer may, at its sole discretion, submit for review and approval a proposed Work Plan (or a revision to an existing Remediation Work Plan for the Site) which addresses the remediation of Existing Contamination. Such proposed Work Plan shall include, among other requirements, an evaluation of the proposed remedy considering the factors set forth in 6 NYCRR 375-1.10(c). At a minimum, the remedial activities contemplated by the proposed Work Plan must eliminate or mitigate all significant threats to the public health or environment and must be protective for the safe implementation of the Site's Contemplated Use. The Department will notice a proposed Work Plan addressing the Site's remediation for public comment in accordance with